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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,968	02/25/2004	Siegfried Foshag	HOE-804	5399
20028	7590	05/14/2007		
Lipsitz & McAllister, LLC 755 MAIN STREET MONROE, CT 06468			EXAMINER LANDRUM, EDWARD F	
			ART UNIT 3724	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/788,968	Applicant(s) FOSHAG, SIEGFRIED	
	Examiner Edward F. Landrum	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/19/2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4, 7-26, and 28-30 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The first and second part of the handles having an ergonomically shaped palm-abutment region is not discussed in the specification. The phrase "hollow between the thumb and forefinger" found on page 11 of the specification does not mean that the palm abuts the handle, as the hollow may not be referencing the inner surface of the hand. Even if the aforementioned phrase did teach a palm abutment region, both handle portions do not contact the hollow between the thumb and forefinger.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 7, 8, 23-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polkowski (U.S Patent No. 743,658) in view of Nishikawa (U.S Patent No. 4,250,620) and in further view of Hamann (U.S Patent No. 434,595).

Polkowski teaches (see Figures 1, 2, 4, and 5) shears formed of two parts (a and b) and both parts made of one piece. Both parts (a and b) also have handle portions (a2 and b2) with ergonomic palm abutment regions as the region is designed to fit a hand, which includes the palm, as well as body portions (d). Both handle parts (a2 and b2) are disposed at an angle relative to the body portions (d) as both handles are not disposed in the same plane as their respective body portions. Furthermore, the shears are capable of being used that a users hand does not come in contact with a work piece, and disposing both handle portions (a2 and b2) above the work piece when in use. A rotary bearing (c2 and c3) provides for pivoting movement between the two parts (a and b). Metal cutting blades (e) are positively attached via screws (f) to the body portions (d) of both parts, and are spaced away from the rotary bearing and outside of the rotary bearing region.

Polkowski teaches all of the elements of the current invention as stated above except both parts of the shears being made of plastic. Polkowski further fails to teach the use of a compression spring disposed between the handle members of both parts, as well as a locking device to lock the shear heads in a closed position.

Nishikawa teaches (see Figure 4; also see Col. 1, lines 51-68) making the head and handle portions of a shear member out of plastic to reduce the weight of the shears as well as the manufacturing time and cost.

It would have been obvious to have modified Polkowski to incorporate the teachings of Nishikawa to make the head and handles out of plastic for the purpose of reducing the overall weight of the cutters as well as decrease the time and cost necessary to manufacturing the shears.

Hamann teaches (see Figure 3) the use of a compression spring between first and second handle members for the purpose of forcing each handle member back to a ready position after a cutting operation is performed. Furthermore Hamann teaches the use of a locking mechanism to lock the shearing blades in a closed position.

It would have been obvious to have modified Polkowski to incorporate the teachings of Hamann to provide a compression spring between the handle members for the purpose of resetting the shear into a cutting position without the user having to exert any energy, thereby preventing a user from becoming fatigued as quickly, and provide a locking device to lock the blades in a closed position so as to prevent a user from inadvertently closing the shears on an extremity when not in use.

5. Claims 1-4, 7, 8, 16-26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (U.S Patent No. 4,333,235) in view of Willard (U.S Patent No. 5,168,629) and in further view of Nishikawa and Hamann.

Regarding claim 1, Howard teaches (see Figures 1-5) shears comprising two handles and two heads. The first head (on member 12) is attached to the first handle (15). The second head (on member 11) is attached to the second handle (15). Both handles have ergonomic palm abutment regions as both handles are designed to hold a hand, which includes part of the palm (figure 5), and are disposed in an angular manner

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relative to the shear head as neither handle is located in the same plane as their corresponding shear head thereby preventing a user's hands from contacting a work piece and disposing both handle portions above the work piece when either in opened or closed positions. The shear head is composed of the first and second heads. A rotary bearing (13) is used to pivot member (11) with respect to member (12). The metal cutting blades (14) of each head are spaced away from the rotary bearing (13).

Regarding claims 7 and 8, Howard teaches (see Figure 1) each member (11 and 12) being formed of one piece.

Regarding claim 17, Howard teaches (see Figures 1 and 3) the first member (12) has an offset portion (20) to hold the second member (11) in a rotatable manner.

Regarding claims 18 and 19, Howard teaches (see Figure 1; also see Col. 2, lines 3-12) the recess (20) of the first member (12) being bounded by the first head on one side and the first handle part (15) on the other.

Regarding claim 21, Howard teaches (see Figure 1) the recess (20) being parallel to the axis of rotation.

Regarding claim 26, Howard teaches (see Figure 1) the head and handle (15) of the second member (11) are connected at right angles.

Howard teaches all of the elements of the current invention as stated above except the use of detachable blades, the blades being positively attached to the heads and positioned away from the rotary bearing, the rotary bearing being an extension of the first cutting blade, both parts of the shears being made of plastic, a compression

spring disposed between the handle members of both parts, and a locking device to lock the shear heads in a closed position.

Willard teaches (see Figure 4) positively connecting metal cutting elements (52 and 86) via screws (54 and 88) to opposing cutting heads (50 and 84) for the purpose of avoiding inadvertent cuts and keeping the blades sterile (Col. 6, lines 16-26). The blades (52 and 86) are placed outside and away from the rotary bearing (90) that is located on a first member (70). Furthermore, a stop member (96) is used in combination with a slot (66) to prevent hyperextension of the blades beyond their desired open position.

It would have been obvious to have modified Howard to incorporate the teachings of Willard to provide detachable blades so the blades could be removed when the shears were not being used to thereby prevent any inadvertent injuries and also provide a bearing member attached to the first member. Attaching the rotary bearing to the first member would provide a constant surface for the second member to rotate about thereby eliminating the need to find a special pin, bolt, or screw to allow the second member to properly rotate on. Furthermore, it would have been obvious to have modified Howard to incorporate the teachings of Willard to provide a stop means to limit the how far the blades could open from each other. Doing so would prevent the two head members from pivoting backwards and potentially hurt the user while also prevent the user from trying to cut objects that were too thick and could potentially damage or break the shear when force was applied.

Nishikawa teaches (see Figure 4; also see Col. 1, lines 51-68) making the head and handle portions of a shear member out of plastic to reduce the weight of the shears as well as the manufacturing time and cost.

It would have been obvious to have modified Howard to incorporate the teachings of Nishikawa to make the head and handles out of plastic for the purpose of reducing the overall weight of the cutters as well as decrease the time and cost necessary to manufacturing the shears.

Hamann teaches (see Figure 3) the use of a compression spring between first and second handle members for the purpose of forcing each handle member back to a ready position after a cutting operation is performed. Furthermore Hamann teaches the use of a locking mechanism to lock the shearing blades in a closed position.

It would have been obvious to have modified Howard to incorporate the teachings of Hamann to provide a compression spring between the handle members for the purpose of resetting the shear into a cutting position without the user having to exert any energy, thereby preventing a user from becoming fatigued as quickly, and provide a locking device to lock the blades in a closed position so as to prevent a user from inadvertently closing the shears on an extremity when not in use.

The modified device of Howard meets the limitation of claim 20 except that it employs a post and slot rather than the end of a recess to prevent the blades from being pivoted too far apart. However, because these two elements were art-recognized equivalents at the time of the invention in those cutting applications, one of ordinary skill



would have found it obvious to substitute the end of a recess for the post and slot of the modified device of Howard.

6. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Polkowski, or the modified device of Howard, in view of Rauh (U.S. Patent No. 2,078,585).

The modified device of Polkowski teaches all of the elements of the current invention as stated above except each blade having one or more corresponding guide surfaces spaced away from the rotary bearing, approximately parallel to the axis of rotation of the rotary bearing, and the blade projecting beyond the guide surface.

The modified device of Howard teaches all of the elements of the current invention as stated above except each blade having one or more corresponding guide surfaces spaced away from the rotary bearing, approximately parallel to the axis of rotation of the rotary bearing, and the blade projecting beyond the guide surface.

Rauh teaches (Col. 1, lines 28-55, Col. 2, lines 1-33; also see Figures 2-4) a guide surface for each blade (4 and 5). The guide surface for first blade (4) for is the lower surface up to the tip of the blade in Figure 4. The guide surface for the second blade (5) is the upper surface up to the tip of the blade in Figure 4. The guide surfaces extend along the cutting edges of their associated cutting blades and in a direction that is approximately parallel to the axis of rotation of the rotary bearing. Each guide surface also extends outwardly away from its associated blade, and due to the slight angle of the guide surface the cutting blades (lowest tip of member 4, and highest tip of member 5) project beyond the associated guiding surface.

It would have been obvious to have modified the modified device of Polkowski, or the modified device of Howard, to incorporate the teachings of Rauh to provide guide surfaces with each blade for the purpose of effectively guiding cut material past the cutting tool for the purpose of avoiding injuries from the edges of the material as well as providing a smoother cut thereby increasing the quality of the scissors.

7. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Polkowski as stated in section 2, or the modified device of Howard as stated in section 3, in view of Elia (U.S Patent No. 2,370,026).

The modified device of Polkowski, and the modified device of Howard, teach all of the elements of the current invention as stated above except the hand-abutment region of the first handle par having a positioning cavity for a users forefinger bounded by a protuberance that forms an abutment surface for a user's middle finger.

Elia teaches (see Figure 1) an ergonomic hand abutment region located on a first handle having a cavity (19) for a forefinger. The cavity (19) has a protuberance (located at 15 in Figure 1) on one side that forms an abutment surface for a middle finger (20).

It would have been obvious to have modified the modified device of Polkowski, or the modified device of Howard, to incorporate the teachings of Elia and provide specific ergonomic features for the handle. Doing so would aid in the proper holding of the shears so that inexperienced persons could learn more easily the proper handling of the shears, as well as reduce the strain and fatigue to a users hand and fingers that is generally associated with conventional handles.

***Response to Arguments***

8. Applicant's arguments filed 4/19/2007 have been fully considered but they are not persuasive.

The amendments to claim 1, specifically the amendments to line 2 and lines 12-14 are intended use. All of the aforementioned references, like the invention of the instant application, are capable of being used so the handles are disposed above the work piece when together or apart, and so a user's hand does not contact the work piece. Furthermore, based on Figure 1, it appears that a users hand could contact the work piece since part of the work piece (48) is guided by the lower handle member.

Regarding applicant's argument that none of the art used are in fact run-through shears, examiner is using the broadest reasonable interpretation for the phrase run-through shears. An example of using run-through shears could be cutting rapping paper, which can be done without even opening or closing the scissor blades, and therefore can be cut by "running through" the wrapping paper with the blades. Any pair of shears can cut wrapping paper.

Regarding applicant's argument that none of the art used discloses ergonomically shaped palm abutment regions both Polkowski and Howard disclose specific handle structures. In Polkowski part of a user's palm would contact the ergonomic structure when the user's thumb was located in one handle portion (a2) and another portion of the palm would contact the second handle portion (b2) opposite that contacted by the rest of the user's fingers. Figure 5 of Howard shows portion of the palm that would contact portions of the handle portions. These regions can be considered ergonomic because they aid a user in holding the shears in a specific way,

which would thereby increase cutting efficiency and effectiveness. Even if it neither Polkowski and Howard were considered to be ergonomic it is old and well known in the cutting art to make shear handles ergonomic and it would have been an obvious design choice to do so.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gover (U.S Patent no. 3,143,799), Isaac (U.S Patent No. 1,594,671), Duffy (U.S Patent No. 3,678,580), Aiken (U.S Patent No. 4,462,157), Knight (U.S Patent No. 6,752,054), O'Keefe et al (U.S Patent No. 4,967,475), Heck et al (U.S Patent No. 6,625,888), Boyajian et al (U.S Patent No. 3,971,131), James (U.S Patent No. 2,310,959), Shaler (U.S Patent No. 2,682,108), Groom (U.S Patent No. 3,336,668), and Hammond (U.S Patent No. 838,504) teach shears pertinent to the instant application.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EFL  
5/9/2007



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